IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

SPL. APPL. WRIT No. 395 of 2001

RAMESHWER PRASHAD
V/S
STATE & ORS

Mr. KULDEEP MATHUR, for the appellant / petitioner

Mr. RAVI BHANSALI, for the respondent

Date of Order : 18.12.2007

HON'BLE SHRI N P GUPTA,J.
HON'BLE SHRI MUNISHWAR NATH BHANDARI,J.

ORDER

By this appeal, the appellant seeks to challenge the order of the learned Single Judge dt. 27.2.2001 dismissing the appellant's writ petition.

The appellant had filed the writ petition on 11.9.1991 praying for issuing direction to the respondents to the respondents to regularise the services of the petitioner on the post of L.D.C. w.e.f. his initial appointment date 1.6.1980 with all consequential benefits. A further direction has been prayed for making fixation of pay, and seniority since appointment, and other ancillary reliefs.

The allegations of the writ petition are that the petitioner was appointed as L.D.C. as daily rated employee

on 1.6.1980. Thereafter he was allowed the pay scale, and was appointed on the vacant post of L.D.C. again on temporary basis for three months. Then, by verbal orders the services were terminated on 1.10.1982 which termination was challenged, and the learned Labour Court decided the reference on 3.2.1987, and ordered reinstatement of the petitioner with all full back wages, and seniority. Copy of this award has been produced as Annexure-1.

It is pleaded that though the petitioner was reinstated in pursuance of the said order but till today the petitioner has not been allowed the minimum pay scale of the L.D.C., and they have not assigned proper seniority as well as regularisation though the learned Labour Court has ordered that the petitioner will be entitled to all consequential benefits like seniority, continuity, and pay. Then, it is pleaded that since 1987 the petitioner is getting salary on daily wages basis, and the benefit of revised pay scale has also not been granted. It is alleged that the petitioner made representation. Then, it is pleaded that the petitioner is paid salary on daily rated basis and being annoyed with the petitioner approaching the Labour Court the services of the petitioner are not regularised and not only the petitioner but more persons like the petitioner are continuing as L.D.C.

Reply had been filed by the respondents contending

interalia that the award dt. 3.2.1987 only hold the oral termination to be illegal, and he was directed to be reinstated w.e.f. 1.10.1982 with back wages and question regarding seniority was not at all involved in the industrial dispute and the learned Labour Court did not examine the question of seniority nor any direction was given in that regard in the award. Likewise, question regarding assignment of pay scale, seniority or regularisation were also not involved in the industrial dispute, nor has it been awarded by the learned Labour Court. It was also pointed out that the petitioner filed claim petition under the Payment of Wages Act but petitions were not found to be maintainable. The petitioner also filed applications under Section 33C(2) of the Industrial Disputes Act claiming arrears of wages on the basis of pay scale of L.D.C. before the learned Labour Court, Bikaner, and therein it was also found that the award had already been complied with as no direction regarding seniority or pay scale was passed in the award. Interalia with this it was pleaded that since the petitioner has suppressed all these facts, the petitioner is not entitled to the reliefs. Certain disputes were also raised about the post on which the petitioner was appointed, and it was specifically refuted by pleading that the petitioner was never appointed as L.D.C.,and the proceedings under Section 29 of the Industrial Disputes Act for enforcement of the award were under taken, and they were closed by recording the fact

that the award has been satisfied, and that matter has not been challenged any further. The order recording that satisfaction is available on record.

The learned Single Judge found that the petitioner did try to get reliefs claimed in the writ petition in appropriate forums, and has failed, and all those facts have not been disclosed before this Court. In such circumstances, the Court did not find Article 226 jurisdiction to be available to the petitioner as the petitioner had tried before the appropriate forum and has failed to prove that he was an auctioneer or that the post of auctioneer was equivalent to the post of L.D.C., or that he was entitled to any increment in the cadre of L.D.C.

The petitioner has produced appointment order Annexure-2 dt. 14.6.1982 whereby the petitioner was appointed on temporary basis for a period of three months, or till duly selected candidates were available in the pay scale of 355-570. Then, a look at the award Annexure-1 shows that thereby the petitioner's termination dt. 1.10.1982 was found to be improper, and invalid, and the petitioner was held entitled to reinstatement with continuity in service, and salary etc. all emoluments "वेतन आदि समस्त देय लाभ". In our view, this award Annexure-1 does not, and cannot be said to be conferring any relief on the petitioner about his regularisation, or about being given

regular pay scale, or the other reliefs as claimed in the writ petition. As is clear from Annexure-2 that the petitioner was appointed purely on temporary basis for a period of three months, or till duly selected candidate is made available, whichever is earlier, simply because the learned Labour Court has found his termination dt. 1.10.1982 to be not sustainable, and simply because that award had not been challenged, it cannot be said that the petitioner appellant is entitled to be regularised in the service as claimed, nor can he be said to be entitled ipso facto to the benefits as claimed, nor can he be said to be so entitled on the basis of assumed continuity of service from the date of initial appointment till reinstatement.

It is not in dispute that the petitioner-appellant approached other forums claiming the same reliefs about pay scales, and all that had failed which fact had not been disclosed in the writ petition, and as such not challenged. In such circumstances, it cannot be said that the learned Single Judge was in any manner, in error, in dismissing the writ petition.

Thus, we do not find any force in the appeal, and the same is, therefore, dismissed.

(MUNISHWAR NATH BHANDARI),J. (N P GUPTA),J.

/Sushil/